

AMENDED IN ASSEMBLY JUNE 22, 2011

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE MAY 11, 2011

AMENDED IN SENATE APRIL 14, 2011

SENATE BILL

No. 790

Introduced by Senator Leno

February 18, 2011

An act to amend Sections 331.1, 365.1, 366.2, 380, 381.1, and 395.5 of, to add Section 707 to, and to add Part 5 (commencing with Section 3260) to Division 1 of, the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

SB 790, as amended, Leno. Electricity: community choice aggregation.

(1) The federal Public Utility Regulatory Policies Act of 1978 (PURPA) requires every state regulatory authority with respect to each electric utility, as defined, for which it has ratemaking authority, to determine whether to adopt certain federal standards if consistent with otherwise applicable state law. The federal standards include that no electric utility may recover from any person other than the shareholders or other owners of the utility, any direct or indirect expenditure by the electric utility for promotional or political advertising, as defined.

This bill would require the commission to institute a rulemaking proceeding by March 1, 2012, for the purpose of considering and adopting a code of conduct, associated rules, and enforcement procedures, to govern the conduct of an electrical corporation relative to the consideration, formation, and implementation of community choice aggregation programs and to implement the code of conduct,

associated rules, and enforcement procedures by January 1, 2013. The bill would require the code of conduct, associated rules, and enforcement procedures to do the following: (A) ensure that an electrical corporation does not market against a community choice aggregation program, except through an independent marketing division that is funded exclusively by the electrical corporation's shareholders, (B) limit the electrical corporation's independent marketing division's use of support services from the electrical corporation's ratepayer funded divisions, (C) ensure that the electrical corporation's independent marketing division does not have access to competitively sensitive information, (D) incorporate rules that the commission finds to be necessary or convenient in order to ~~promote~~ *facilitate* the development of community choice aggregation programs, to foster fair competition, or to protect against cross-subsidization paid by ratepayers, and (E) other matters that the commission determines to be necessary or advisable to protect a ratepayer's right to be free from forced speech or to implement that portion of PURPA that establishes the federal standard that no electric utility may recover from any person other than the shareholders or other owners of the utility, any direct or indirect expenditure by the electric utility for promotional or political advertising.

(2) Existing law authorizes a community choice aggregator to aggregate the electrical load of interested electricity consumers within its boundaries and requires a community choice aggregator to file an implementation plan with the commission. Existing law requires an electrical corporation to cooperate fully with any community choice aggregator that investigates, pursues, or implements community choice aggregation programs, including providing appropriate billing and electrical load data.

This bill would expand the entities that are permitted to undertake community choice aggregation. The bill would require that the electrical load data to be supplied by an electrical corporation as part of its duty to cooperate fully with any community choice aggregator, include electrical consumption data, as defined. The bill would, if the commission finds that an electrical corporation has violated the requirement to cooperate fully with a community choice aggregator, require that the commission consider the impact of the violation upon community choice aggregators. The bill would revise certain resource adequacy requirements as they relate to community choice aggregators. The bill would require that any program funded through a nonbypassable charge be administered on a nondiscriminatory basis so that the electric

service customers of a community choice aggregator may participate in the program on an equal basis with the customers of an electrical corporation. The bill would require the commission to authorize a community choice aggregator to elect to become a 3rd-party administrator of funds collected from the aggregator's electric service customer and collected through a nonbypassable charge authorized by the commission for cost-effective energy efficiency and conservation programs, except those funds collected for broader statewide and regional programs authorized by the commission.

(3) The bill would provide that nothing in Division 1 of the Public Utilities Code, which includes the Public Utilities Act, prohibits payment pursuant to an agreement authorized by the National Labor Relations Act or federal Labor Management Cooperation Act of 1978 or restricts the use permitted by federal law of money paid pursuant to those acts.

(4) Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because this bill would expand the duties owed by an electrical corporation pursuant to the act, the bill would impose a state-mandated local program by creating a new crime or expanding the definition of an existing crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) It is the policy of the state to provide for the consideration,
- 4 formation, and implementation of community choice aggregation
- 5 programs authorized in Section 366.2 of the Public Utilities Code.
- 6 (b) Since community choice aggregation programs were first
- 7 authorized in 2002, only one community choice aggregation
- 8 program has been implemented.

1 (c) Electrical corporations have inherent market power derived
2 from, among other things, name recognition among customers,
3 longstanding relationships with customers, joint control over
4 regulated operations and competitive generation services, access
5 to competitive customer information, and the potential to
6 cross-subsidize competitive generation services.

7 (d) The Public Utilities Commission has found that conduct by
8 electrical corporations to oppose community choice aggregation
9 programs has had the effect of causing community choice
10 aggregation programs to be abandoned.

11 (e) The Public Utilities Commission has made considerable
12 progress in identifying and addressing the conduct that has hindered
13 the creation of community choice aggregation programs, and it is
14 now appropriate to further address these issues in statute.

15 (f) The exercise of market power by electrical corporations is
16 a deterrent to the consideration, development, and implementation
17 of community choice aggregation programs.

18 (g) California has a substantial governmental interest in ensuring
19 that conduct by electrical corporations does not threaten the
20 consideration, development, and implementation of community
21 choice aggregation programs.

22 (h) It is therefore necessary to establish a code of conduct,
23 associated rules, and enforcement procedures, applicable to
24 electrical corporations in order to ~~promote~~ *facilitate* the
25 consideration, development, and implementation of community
26 choice aggregation programs, to foster fair competition, and to
27 protect against cross-subsidization by ratepayers.

28 SEC. 2. Section 331.1 of the Public Utilities Code is amended
29 to read:

30 331.1. For purposes of this chapter, “community choice
31 aggregator” means any of the following entities, if that entity is
32 not within the jurisdiction of a local publicly owned electric utility
33 that provided electrical service as of January 1, 2003:

34 (a) Any city, county, or city and county whose governing board
35 elects to combine the loads of its residents, businesses, and
36 municipal facilities in a communitywide electricity buyers’
37 program.

38 (b) Any group of cities, counties, or cities and counties whose
39 governing boards have elected to combine the loads of their
40 programs, through the formation of a joint powers agency

1 established under Chapter 5 (commencing with Section 6500) of
2 Division 7 of Title 1 of the Government Code.

3 (c) The Kings River Conservation District, the Sonoma County
4 Water Agency, and any California public agency possessing
5 statutory authority to generate and deliver electricity at retail within
6 its designated jurisdiction, provided the entity may only combine
7 the loads of residences, businesses, and governmental facilities of
8 cities and counties within, or contiguous to, its jurisdiction that
9 have, by resolution exercised pursuant to paragraph (11) of
10 subdivision (c) of Section 366.2, requested the agency to implement
11 a community choice aggregation program.

12 SEC. 3. Section 365.1 of the Public Utilities Code is amended
13 to read:

14 365.1. (a) Except as expressly authorized by this section, and
15 subject to the limitations in subdivisions (b) and (c), the right of
16 retail end-use customers pursuant to this chapter to acquire service
17 from other providers is suspended until the Legislature, by statute,
18 lifts the suspension or otherwise authorizes direct transactions. For
19 purposes of this section, “other provider” means any person,
20 corporation, or other entity that is authorized to provide electric
21 service within the service territory of an electrical corporation
22 pursuant to this chapter, and includes an aggregator, broker, or
23 marketer, as defined in Section 331, and an electric service
24 provider, as defined in Section 218.3. “Other provider” does not
25 include a community choice aggregator, as defined in Section
26 331.1, and the limitations in this section do not apply to the sale
27 of electricity by “other providers” to a community choice
28 aggregator for resale to community choice aggregation electricity
29 consumers pursuant to Section 366.2.

30 (b) The commission shall allow individual retail nonresidential
31 end-use customers to acquire electric service from other providers
32 in each electrical corporation’s distribution service territory, up to
33 a maximum allowable total kilowatthours annual limit. The
34 maximum allowable annual limit shall be established by the
35 commission for each electrical corporation at the maximum total
36 kilowatthours supplied by all other providers to distribution
37 customers of that electrical corporation during any sequential
38 12-month period between April 1, 1998, and the effective date of
39 this section. Within six months of the effective date of this section,
40 or by July 1, 2010, whichever is sooner, the commission shall

1 adopt and implement a reopening schedule that commences
2 immediately and will phase in the allowable amount of increased
3 kilowatthours over a period of not less than three years, and not
4 more than five years, raising the allowable limit of kilowatthours
5 supplied by other providers in each electrical corporation's
6 distribution service territory from the number of kilowatthours
7 provided by other providers as of the effective date of this section,
8 to the maximum allowable annual limit for that electrical
9 corporation's distribution service territory. The commission shall
10 review and, if appropriate, modify its currently effective rules
11 governing direct transactions, but that review shall not delay the
12 start of the phase-in schedule.

13 (c) Once the commission has authorized additional direct
14 transactions pursuant to subdivision (b), it shall do both of the
15 following:

16 (1) Ensure that other providers are subject to the same
17 requirements that are applicable to the state's three largest electrical
18 corporations under any programs or rules adopted by the
19 commission to implement the resource adequacy provisions of
20 Section 380, the renewables portfolio standard provisions of Article
21 16 (commencing with Section 399.11), and the requirements for
22 the electricity sector adopted by the State Air Resources Board
23 pursuant to the California Global Warming Solutions Act of 2006
24 (Division 25.5 (commencing with Section 38500) of the Health
25 and Safety Code). This requirement applies notwithstanding any
26 prior decision of the commission to the contrary.

27 (2) (A) Ensure that, in the event that the commission authorizes,
28 in the situation of a contract with a third party, or orders, in the
29 situation of utility-owned generation, an electrical corporation to
30 obtain generation resources that the commission determines are
31 needed to meet system or local area reliability needs for the benefit
32 of all customers in the electrical corporation's distribution service
33 territory, the net capacity costs of those generation resources are
34 allocated on a fully nonbypassable basis consistent with departing
35 load provisions as determined by the commission, to all of the
36 following:

37 (i) Bundled service customers of the electrical corporation.

38 (ii) Customers that purchase electricity through a direct
39 transaction with other providers.

40 (iii) Customers of community choice aggregators.

1 (B) If the commission authorizes or orders an electrical
2 corporation to obtain generation resources, the commission shall
3 ensure that those resources meet a system or local reliability need
4 in a manner that benefits all customers of the electrical corporation
5 in proportion to the costs recovered from those ratepayers.

6 (C) The resource adequacy benefits of generation resources
7 acquired by an electrical corporation pursuant to subparagraph (A)
8 shall be allocated to all customers who pay their net capacity costs.
9 Net capacity costs shall be determined by subtracting the energy
10 and ancillary services value of the resource from the total costs
11 paid by the electrical corporation pursuant to a contract with a
12 third party or the annual revenue requirement for the resource if
13 the electrical corporation directly owns the resource. An energy
14 auction shall not be required as a condition for applying this
15 allocation, but may be allowed as a means to establish the energy
16 and ancillary services value of the resource for purposes of
17 determining the net costs of capacity to be recovered from
18 customers pursuant to this paragraph, and the allocation of the net
19 capacity costs of contracts with third parties shall be allowed for
20 the terms of those contracts.

21 (D) It is the intent of the Legislature, in enacting this paragraph,
22 to provide additional guidance to the commission with respect to
23 the implementation of subdivision (g) of Section 380, as well as
24 to ensure that the customers to whom the net costs and benefits of
25 capacity are allocated are not required to pay for the cost of
26 electricity they do not consume.

27 (d) (1) If the commission approves a centralized resource
28 adequacy mechanism pursuant to subdivisions (h) and (i) of Section
29 380, upon the implementation of the centralized resource adequacy
30 mechanism the requirements of paragraph (2) of subdivision (c)
31 shall be suspended. If the commission later orders that electrical
32 corporations cease procuring capacity through a centralized
33 resource adequacy mechanism, the requirements of paragraph (2)
34 of subdivision (c) shall again apply.

35 (2) If the use of a centralized resource adequacy mechanism is
36 authorized by the commission and has been implemented as set
37 forth in paragraph (1), the net capacity costs of generation resources
38 that the commission determines are required to meet urgent system
39 or urgent local grid reliability needs, and that the commission
40 authorizes to be procured outside of the Section 380 or Section

1 454.5 processes, shall be recovered according to the provisions of
2 paragraph (2) of subdivision (c).

3 (3) Nothing in this subdivision supplants the resource adequacy
4 requirements of Section 380 or the resource procurement
5 procedures established in Section 454.5.

6 (e) The commission may report to the Legislature on the efficacy
7 of authorizing individual retail end-use residential customers to
8 enter into direct transactions, including appropriate consumer
9 protections.

10 SEC. 4. Section 366.2 of the Public Utilities Code is amended
11 to read:

12 366.2. (a) (1) Customers shall be entitled to aggregate their
13 electric loads as members of their local community with
14 community choice aggregators.

15 (2) Customers may aggregate their loads through a public
16 process with community choice aggregators, if each customer is
17 given an opportunity to opt out of their community's aggregation
18 program.

19 (3) If a customer opts out of a community choice aggregator's
20 program, or has no community choice aggregation program
21 available, that customer shall have the right to continue to be served
22 by the existing electrical corporation or its successor in interest.

23 (b) If a public agency seeks to serve as a community choice
24 aggregator, it shall offer the opportunity to purchase electricity to
25 all residential customers within its jurisdiction.

26 (c) (1) Notwithstanding Section 366, a community choice
27 aggregator is hereby authorized to aggregate the electrical load of
28 interested electricity consumers within its boundaries to reduce
29 transaction costs to consumers, provide consumer protections, and
30 leverage the negotiation of contracts. However, the community
31 choice aggregator may not aggregate electrical load if that load is
32 served by a local publicly owned electric utility. A community
33 choice aggregator may group retail electricity customers to solicit
34 bids, broker, and contract for electricity and energy services for
35 those customers. The community choice aggregator may enter into
36 agreements for services to facilitate the sale and purchase of
37 electricity and other related services. Those service agreements
38 may be entered into by a single city or county, a city and county,
39 or by a group of cities, cities and counties, or counties.

(2) Under community choice aggregation, customer participation may not require a positive written declaration, but all customers shall be informed of their right to opt out of the community choice aggregation program. If no negative declaration is made by a customer, that customer shall be served through the community choice aggregation program. If an existing customer moves the location of their electric service within the jurisdiction of the community choice aggregator, the customer shall retain the same subscriber status as prior to the move, unless the customer affirmatively changes their subscriber status. If the customer is moving from outside to inside the jurisdiction of the community choice aggregator, customer participation shall not require a positive written declaration, but the customer shall be informed of their right to elect not to receive service through the community choice aggregator.

(3) A community choice aggregator establishing electrical load aggregation pursuant to this section shall develop an implementation plan detailing the process and consequences of aggregation. The implementation plan, and any subsequent changes to it, shall be considered and adopted at a duly noticed public hearing. The implementation plan shall contain all of the following:

(A) An organizational structure of the program, its operations, and its funding.

(B) Ratesetting and other costs to participants.

(C) Provisions for disclosure and due process in setting rates and allocating costs among participants.

(D) The methods for entering and terminating agreements with other entities.

(E) The rights and responsibilities of program participants, including, but not limited to, consumer protection procedures, credit issues, and shutoff procedures.

(F) Termination of the program.

(G) A description of the third parties that will be supplying electricity under the program, including, but not limited to, information about financial, technical, and operational capabilities.

(4) A community choice aggregator establishing electrical load aggregation shall prepare a statement of intent with the implementation plan. Any community choice load aggregation established pursuant to this section shall provide for the following:

(A) Universal access.

1 (B) Reliability.

2 (C) Equitable treatment of all classes of customers.

3 (D) Any requirements established by state law or by the
4 commission concerning aggregated service, including those rules
5 adopted by the commission pursuant to paragraph (3) of
6 subdivision (b) of Section 8341 for the application of the
7 greenhouse gases emission performance standard to community
8 choice aggregators.

9 (5) In order to determine the cost-recovery mechanism to be
10 imposed on the community choice aggregator pursuant to
11 subdivisions (d), (e), and (f) that shall be paid by the customers of
12 the community choice aggregator to prevent shifting of costs, the
13 community choice aggregator shall file the implementation plan
14 with the commission, and any other information requested by the
15 commission that the commission determines is necessary to develop
16 the cost-recovery mechanism in subdivisions (d), (e), and (f).

17 (6) The commission shall notify any electrical corporation
18 serving the customers proposed for aggregation that an
19 implementation plan initiating community choice aggregation has
20 been filed, within 10 days of the filing.

21 (7) Within 90 days after the community choice aggregator
22 establishing load aggregation files its implementation plan, the
23 commission shall certify that it has received the implementation
24 plan, including any additional information necessary to determine
25 a cost-recovery mechanism. After certification of receipt of the
26 implementation plan and any additional information requested,
27 the commission shall then provide the community choice
28 aggregator with its findings regarding any cost recovery that must
29 be paid by customers of the community choice aggregator to
30 prevent a shifting of costs as provided for in subdivisions (d), (e),
31 and (f).

32 (8) No entity proposing community choice aggregation shall
33 act to furnish electricity to electricity consumers within its
34 boundaries until the commission determines the cost-recovery that
35 must be paid by the customers of that proposed community choice
36 aggregation program, as provided for in subdivisions (d), (e), and
37 (f). The commission shall designate the earliest possible effective
38 date for implementation of a community choice aggregation
39 program, taking into consideration the impact on any annual

1 procurement plan of the electrical corporation that has been
2 approved by the commission.

3 (9) All electrical corporations shall cooperate fully with any
4 community choice aggregators that investigate, pursue, or
5 implement community choice aggregation programs. Cooperation
6 shall include providing the entities with appropriate billing and
7 electrical load data, including, but not limited to, electrical
8 consumption data as defined in Section 8380 and other data
9 detailing electricity needs and patterns of usage, as determined by
10 the commission, and in accordance with procedures established
11 by the commission, and pursuant to the procedures established by
12 the commission. Those procedures shall not require electrical
13 corporations to obtain a customer's consent for the provision of
14 billing and electrical load data if the community choice aggregator
15 agrees to reasonable safeguards appropriate to the nature of the
16 data to prevent the disclosure of the data to third parties. The
17 commission shall exercise its authority pursuant to Chapter 11
18 (commencing with Section 2100) to enforce the requirements of
19 this paragraph when it finds that the requirements of this paragraph
20 have been violated. Electrical corporations shall continue to provide
21 all metering, billing, collection, and customer service to retail
22 customers that participate in community choice aggregation
23 programs. Bills sent by the electrical corporation to retail customers
24 shall identify the community choice aggregator as providing the
25 electrical energy component of the bill. The commission shall
26 determine the terms and conditions under which the electrical
27 corporation provides services to community choice aggregators
28 and retail customers.

29 (10) If the commission finds that an electrical corporation has
30 violated this section, the commission shall consider the impact of
31 the violation upon community choice aggregators.

32 (11) The commission shall proactively expedite the complaint
33 process for disputes regarding an electrical corporation's violation
34 of its obligations pursuant to this section in order to provide for
35 timely resolution of complaints made by community choice
36 aggregation programs, so that all complaints are resolved in no
37 more than 180 days following the filing of a complaint by a
38 community choice aggregation program concerning the actions of
39 the incumbent electrical corporation. This deadline may only be
40 extended upon the agreement of all parties to the complaint.

1 (12) (A) An entity authorized to be a community choice
2 aggregator, as defined in Section 331.1, that elects to implement
3 a community choice aggregation program within its jurisdiction
4 pursuant to this chapter, shall do so by ordinance. A city or county
5 may request, by affirmative resolution of its governing council or
6 board, that another entity authorized to be a community choice
7 aggregator act as the community choice aggregator on its behalf.
8 If a city or county, by resolution, requests another authorized entity
9 be the community choice aggregator for the city or county, that
10 authorized entity shall be responsible for adopting the ordinance
11 to implement the community choice aggregation program on behalf
12 of the city or county.

13 (B) Two or more entities authorized to be a community choice
14 aggregator, as defined in Section 331.1, may participate as a group
15 in a community choice aggregation program pursuant to this
16 chapter, through a joint powers agency established pursuant to
17 Chapter 5 (commencing with Section 6500) of Division 7 of Title
18 1 of the Government Code, if each entity adopts an ordinance
19 pursuant to subparagraph (A). Pursuant to Section 6508.1 of the
20 Government Code, members of a joint powers agency that is a
21 community choice aggregator may specify in their joint powers
22 agreement that, unless otherwise agreed by the members of the
23 agency, the debts, liabilities, and obligations of the agency shall
24 not be the debts, liabilities, and obligations, either jointly or
25 severally, of the members of the agency. The commission shall
26 not, as a condition of registration or otherwise, require an agency's
27 members to voluntarily assume the debts, liabilities, and obligations
28 of the agency to the electrical corporation unless the commission
29 finds that the agreement by the agency's members is the only
30 reasonable means by which the agency may establish its
31 creditworthiness under the electrical corporation's tariff to pay
32 charges to the electrical corporation under the tariff.

33 (13) Following adoption of aggregation through the ordinance
34 described in paragraph (12), the program shall allow any retail
35 customer to opt out and to continue to be served as a bundled
36 service customer by the existing electrical corporation, or its
37 successor in interest. Delivery services shall be provided at the
38 same rates, terms, and conditions, as approved by the commission,
39 for community choice aggregation customers and customers that
40 have entered into a direct transaction where applicable, as

1 determined by the commission. Once enrolled in the aggregated
2 entity, any ratepayer that chooses to opt out within 60 days or two
3 billing cycles of the date of enrollment may do so without penalty
4 and shall be entitled to receive default service pursuant to paragraph
5 (3) of subdivision (a). Customers that return to the electrical
6 corporation for procurement services shall be subject to the same
7 terms and conditions as are applicable to other returning direct
8 access customers from the same class, as determined by the
9 commission, as authorized by the commission pursuant to this
10 code or any other provision of law, except that those customers
11 shall be subject to no more than a 12-month stay requirement with
12 the electrical corporation. Any reentry fees to be imposed after the
13 opt-out period specified in this paragraph, shall be approved by
14 the commission and shall reflect the cost of reentry. The
15 commission shall exclude any amounts previously determined and
16 paid pursuant to subdivisions (d), (e), and (f) from the cost of
17 reentry.

18 (14) Nothing in this section shall be construed as authorizing
19 any city or any community choice retail load aggregator to restrict
20 the ability of retail electricity customers to obtain or receive service
21 from any authorized electric service provider in a manner consistent
22 with law.

23 (15) (A) The community choice aggregator shall fully inform
24 participating customers at least twice within two calendar months,
25 or 60 days, in advance of the date of commencing automatic
26 enrollment. Notifications may occur concurrently with billing
27 cycles. Following enrollment, the aggregated entity shall fully
28 inform participating customers for not less than two consecutive
29 billing cycles. Notification may include, but is not limited to, direct
30 mailings to customers, or inserts in water, sewer, or other utility
31 bills. Any notification shall inform customers of both of the
32 following:

33 (i) That they are to be automatically enrolled and that the
34 customer has the right to opt out of the community choice
35 aggregator without penalty.

36 (ii) The terms and conditions of the services offered.

37 (B) The community choice aggregator may request the
38 commission to approve and order the electrical corporation to
39 provide the notification required in subparagraph (A). If the
40 commission orders the electrical corporation to send one or more

1 of the notifications required pursuant to subparagraph (A) in the
2 electrical corporation's normally scheduled monthly billing
3 process, the electrical corporation shall be entitled to recover from
4 the community choice aggregator all reasonable incremental costs
5 it incurs related to the notification or notifications. The electrical
6 corporation shall fully cooperate with the community choice
7 aggregator in determining the feasibility and costs associated with
8 using the electrical corporation's normally scheduled monthly
9 billing process to provide one or more of the notifications required
10 pursuant to subparagraph (A).

11 (C) Each notification shall also include a mechanism by which
12 a ratepayer may opt out of community choice aggregated service.
13 The opt out may take the form of a self-addressed return postcard
14 indicating the customer's election to remain with, or return to,
15 electrical energy service provided by the electrical corporation, or
16 another straightforward means by which the customer may elect
17 to derive electrical energy service through the electrical corporation
18 providing service in the area.

19 (16) A community choice aggregator shall have an operating
20 service agreement with the electrical corporation prior to furnishing
21 electric service to consumers within its jurisdiction. The service
22 agreement shall include performance standards that govern the
23 business and operational relationship between the community
24 choice aggregator and the electrical corporation. The commission
25 shall ensure that any service agreement between the community
26 choice aggregator and the electrical corporation includes equitable
27 responsibilities and remedies for all parties. The parties may
28 negotiate specific terms of the service agreement, provided the
29 service agreement is consistent with this chapter.

30 (17) The community choice aggregator shall register with the
31 commission, which may require additional information to ensure
32 compliance with basic consumer protection rules and other
33 procedural matters.

34 (18) Once the community choice aggregator's contract is signed,
35 the community choice aggregator shall notify the applicable
36 electrical corporation that community choice service will
37 commence within 30 days.

38 (19) Once notified of a community choice aggregator program,
39 the electrical corporation shall transfer all applicable accounts to

1 the new supplier within a 30-day period from the date of the close
2 of their normally scheduled monthly metering and billing process.

3 (20) An electrical corporation shall recover from the community
4 choice aggregator any costs reasonably attributable to the
5 community choice aggregator, as determined by the commission,
6 of implementing this section, including, but not limited to, all
7 business and information system changes, except for
8 transaction-based costs as described in this paragraph. Any costs
9 not reasonably attributable to a community choice aggregator shall
10 be recovered from ratepayers, as determined by the commission.
11 All reasonable transaction-based costs of notices, billing, metering,
12 collections, and customer communications or other services
13 provided to an aggregator or its customers shall be recovered from
14 the aggregator or its customers on terms and at rates to be approved
15 by the commission.

16 (21) At the request and expense of any community choice
17 aggregator, electrical corporations shall install, maintain, and
18 calibrate metering devices at mutually agreeable locations within
19 or adjacent to the community aggregator's political boundaries.
20 The electrical corporation shall read the metering devices and
21 provide the data collected to the community aggregator at the
22 aggregator's expense. To the extent that the community aggregator
23 requests a metering location that would require alteration or
24 modification of a circuit, the electrical corporation shall only be
25 required to alter or modify a circuit if such alteration or
26 modification does not compromise the safety, reliability, or
27 operational flexibility of the electrical corporation's facilities. All
28 costs incurred to modify circuits pursuant to this paragraph, shall
29 be borne by the community aggregator.

30 (d) (1) It is the intent of the Legislature that each retail end-use
31 customer that has purchased power from an electrical corporation
32 on or after February 1, 2001, should bear a fair share of the
33 Department of Water Resources' electricity purchase costs, as well
34 as electricity purchase contract obligations incurred as of the
35 effective date of the act adding this section, that are recoverable
36 from electrical corporation customers in commission-approved
37 rates. It is further the intent of the Legislature to prevent any
38 shifting of recoverable costs between customers.

39 (2) The Legislature finds and declares that this subdivision is
40 consistent with the requirements of Division 27 (commencing with

1 Section 80000) of the Water Code and Section 360.5, and is
2 therefore declaratory of existing law.

3 (e) A retail end-use customer that purchases electricity from a
4 community choice aggregator pursuant to this section shall pay
5 both of the following:

6 (1) A charge equivalent to the charges that would otherwise be
7 imposed on the customer by the commission to recover bond
8 related costs pursuant to any agreement between the commission
9 and the Department of Water Resources pursuant to Section 80110
10 of the Water Code, which charge shall be payable until any
11 obligations of the Department of Water Resources pursuant to
12 Division 27 (commencing with Section 80000) of the Water Code
13 are fully paid or otherwise discharged.

14 (2) Any additional costs of the Department of Water Resources,
15 equal to the customer's proportionate share of the Department of
16 Water Resources' estimated net unavoidable electricity purchase
17 contract costs as determined by the commission, for the period
18 commencing with the customer's purchases of electricity from the
19 community choice aggregator, through the expiration of all then
20 existing electricity purchase contracts entered into by the
21 Department of Water Resources.

22 (f) A retail end-use customer purchasing electricity from a
23 community choice aggregator pursuant to this section shall
24 reimburse the electrical corporation that previously served the
25 customer for all of the following:

26 (1) The electrical corporation's unrecovered past
27 undercollections for electricity purchases, including any financing
28 costs, attributable to that customer, that the commission lawfully
29 determines may be recovered in rates.

30 (2) Any additional costs of the electrical corporation recoverable
31 in commission-approved rates, equal to the share of the electrical
32 corporation's estimated net unavoidable electricity purchase
33 contract costs attributable to the customer, as determined by the
34 commission, for the period commencing with the customer's
35 purchases of electricity from the community choice aggregator,
36 through the expiration of all then existing electricity purchase
37 contracts entered into by the electrical corporation.

38 (g) To the extent that the estimated net unavoidable electricity
39 costs paid by the customers of a community choice aggregator
40 reimburse an electrical corporation for its costs to comply with the

resource adequacy provisions of Section 380, the renewables portfolio standard requirements of Article 16 (commencing with Section 399.11), or the requirements for the electricity sector adopted by the State Air Resources Board pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code), ~~or for any other electrical or environmental attribute of the electric utility's resources, the community choice aggregator shall annually be given commensurate credit towards its own obligations to comply with the resource adequacy, renewables portfolio standard, and global warming requirements. the community choice aggregator, or its customers, shall be given commensurate credit in the form of a reduction in net unavoidable electricity costs or an allocation of the benefits. To the extent an electrical corporation receives benefits on behalf of the customers of a community choice aggregator related to the requirements for the electricity sector adopted by the State Air Resources Board pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code), those benefits shall be transferred or credited to the community choice aggregator or its customers.~~

(h) (1) Any charges imposed pursuant to subdivision (e) shall be the property of the Department of Water Resources. Any charges imposed pursuant to subdivision (f) shall be the property of the electrical corporation. The commission shall establish mechanisms, including agreements with, or orders with respect to, electrical corporations necessary to ensure that charges payable pursuant to this section shall be promptly remitted to the party entitled to payment.

(2) Charges imposed pursuant to subdivisions (d), (e), and (f) shall be nonbypassable.

(i) The commission shall authorize community choice aggregation only if the commission imposes a cost-recovery mechanism pursuant to subdivisions (d), (e), (f), and (h). Except as provided by this subdivision, this section shall not alter the suspension by the commission of direct purchases of electricity from alternate providers other than by community choice aggregators, pursuant to Section 365.1.

(j) (1) The commission shall not authorize community choice aggregation until it implements a cost-recovery mechanism,

1 consistent with subdivisions (d), (e), and (f), that is applicable to
2 customers that elected to purchase electricity from an alternate
3 provider between February 1, 2001, and January 1, 2003.

4 (2) The commission shall not authorize community choice
5 aggregation until it has adopted rules for implementing community
6 choice aggregation.

7 (k) Except for nonbypassable charges imposed by the
8 commission pursuant to subdivisions (d), (e), (f), and (h), and
9 programs authorized by the commission to provide broader
10 statewide or regional benefits to all customers, electric service
11 customers of a community choice aggregator shall not be required
12 to pay nonbypassable charges for goods, services, or programs
13 that do not directly benefit either, or where applicable, both, the
14 customer and the community choice aggregator serving the
15 customer. The commission, Energy Commission, electrical
16 corporation, or third-party administrator shall administer any
17 program funded through a nonbypassable charge on a
18 nondiscriminatory basis so that the electric service customers of
19 a community choice aggregator may participate in the program on
20 an equal basis with the customers of an electrical corporation.

21 (l) (1) An electrical corporation shall not terminate the services
22 of a community choice aggregator unless authorized by a vote of
23 the full commission. The commission shall ensure that prior to
24 authorizing a termination of service, that the community choice
25 aggregator has been provided adequate notice and a reasonable
26 opportunity to be heard regarding any electrical corporation
27 contentions in support of termination. If the contentions made by
28 the electrical corporation in favor of termination include factual
29 claims, the community choice aggregator shall be afforded an
30 opportunity to address those claims in an evidentiary hearing.

31 (2) Notwithstanding paragraph (1), if the Independent System
32 Operator has transferred the community choice aggregator's
33 scheduling coordination responsibilities to the incumbent electrical
34 corporation, an administrative law judge or assigned commissioner,
35 after providing the aggregator with notice and an opportunity to
36 respond, may suspend the aggregator's service to customers
37 pending a full vote of the commission.

38 (m) Any meeting of an entity authorized to be a community
39 choice aggregator, as defined in Section 331.1, for the purpose of
40 developing, implementing, or administering a program of

1 community choice aggregation shall be conducted in the manner
2 prescribed by the Ralph M. Brown Act (Chapter 9 (commencing
3 with Section 54950) of Part 1 of Division 2 of Title 5 of the
4 Government Code).

5 SEC. 5. Section 380 of the Public Utilities Code is amended
6 to read:

7 380. (a) The commission, in consultation with the Independent
8 System Operator, shall establish resource adequacy requirements
9 for all load-serving entities.

10 (b) In establishing resource adequacy requirements, the
11 commission shall achieve all of the following objectives:

12 (1) Facilitate development of new generating capacity and
13 retention of existing generating capacity that is economic and
14 needed.

15 (2) Equitably allocate the cost of generating capacity and prevent
16 shifting of costs between customer classes.

17 (3) Minimize enforcement requirements and costs.

18 (4) Maximize the ability of community choice aggregators to
19 determine the generation resources used to serve their customers.

20 (c) Each load-serving entity shall maintain physical generating
21 capacity adequate to meet its load requirements, including, but not
22 limited to, peak demand and planning and operating reserves. The
23 generating capacity shall be deliverable to locations and at times
24 as may be necessary to provide reliable electric service.

25 (d) Each load-serving entity shall, at a minimum, meet the most
26 recent minimum planning reserve and reliability criteria approved
27 by the Board of Trustees of the Western Systems Coordinating
28 Council or the Western Electricity Coordinating Council.

29 (e) The commission shall implement and enforce the resource
30 adequacy requirements established in accordance with this section
31 in a nondiscriminatory manner. Each load-serving entity shall be
32 subject to the same requirements for resource adequacy and the
33 renewables portfolio standard program that are applicable to
34 electrical corporations pursuant to this section, or otherwise
35 required by law, or by order or decision of the commission. The
36 commission shall exercise its enforcement powers to ensure
37 compliance by all load-serving entities. Except for the
38 commission's authority to enforce resource adequacy requirements
39 pursuant to this section, the renewables portfolio standard
40 procurement requirements pursuant to Article 16 (commencing

1 with Section 399.11), and providing for system and local reliability
2 pursuant to paragraph (2) of subdivision (c) of Section 365.1, the
3 commission has no authority or jurisdiction with respect to the
4 generation procurement activities of community choice aggregators
5 and shall not authorize an electrical corporation to procure
6 generation resources on behalf of customers of a community choice
7 aggregator.

8 (f) The commission shall require sufficient information,
9 including, but not limited to, anticipated load, actual load, and
10 measures undertaken by a load-serving entity to ensure resource
11 adequacy, to be reported to enable the commission to determine
12 compliance with the resource adequacy requirements established
13 by the commission.

14 (g) An electrical corporation's costs of meeting resource
15 adequacy requirements, including, but not limited to, the costs
16 associated with system reliability and local area reliability, that
17 are determined to be reasonable by the commission, or are
18 otherwise recoverable under a procurement plan approved by the
19 commission pursuant to Section 454.5, shall be fully recoverable
20 from those customers on whose behalf the costs are incurred, as
21 determined by the commission, at the time the commitment to
22 incur the cost is made, on a fully nonbypassable basis, as
23 determined by the commission. The commission shall exclude any
24 amounts authorized to be recovered pursuant to Section 366.2
25 when authorizing the amount of costs to be recovered from
26 customers of a community choice aggregator or from customers
27 that purchase electricity through a direct transaction pursuant to
28 this subdivision.

29 (h) The commission shall determine and authorize the most
30 efficient and equitable means for achieving all of the following:

- 31 (1) Meeting the objectives of this section.
- 32 (2) Ensuring that investment is made in new generating capacity.
- 33 (3) Ensuring that existing generating capacity that is economic
34 is retained.
- 35 (4) Ensuring that the cost of generating capacity is allocated
36 equitably.
- 37 (5) Ensuring that community choice aggregators can determine
38 the generation resources used to serve their customers.

1 (i) In making the determination pursuant to subdivision (h), the
2 commission may consider a centralized resource adequacy
3 mechanism among other options.

4 (j) For purposes of this section, “load-serving entity” means an
5 electrical corporation, electric service provider, or community
6 choice aggregator. “Load-serving entity” does not include any of
7 the following:

8 (1) A local publicly owned electric utility.

9 (2) The State Water Resources Development System commonly
10 known as the State Water Project.

11 (3) Customer generation located on the customer’s site or
12 providing electric service through arrangements authorized by
13 Section 218, if the customer generation, or the load it serves, meets
14 one of the following criteria:

15 (A) It takes standby service from the electrical corporation on
16 a commission-approved rate schedule that provides for adequate
17 backup planning and operating reserves for the standby customer
18 class.

19 (B) It is not physically interconnected to the electric transmission
20 or distribution grid, so that, if the customer generation fails, backup
21 electricity is not supplied from the electricity grid.

22 (C) There is physical assurance that the load served by the
23 customer generation will be curtailed concurrently and
24 commensurately with an outage of the customer generation.

25 SEC. 6. Section 381.1 of the Public Utilities Code is amended
26 to read:

27 381.1. (a) No later than July 15, 2003, the commission shall
28 establish policies and procedures by which any party, including,
29 but not limited to, a local entity that establishes a community choice
30 aggregation program, may apply to become administrators for
31 cost-effective energy efficiency and conservation programs
32 established pursuant to Section 381. In determining whether to
33 approve an application to become administrators and subject to an
34 aggregator’s right to elect to become an administrator pursuant to
35 subdivision (f), the commission shall consider the value of program
36 continuity and planning certainty and the value of allowing
37 competitive opportunities for potentially new administrators. The
38 commission shall weigh the benefits of the party’s proposed
39 program to ensure that the program meets the following objectives:

1 (1) Is consistent with the goals of the existing programs
2 established pursuant to Section 381.

3 (2) Advances the public interest in maximizing cost-effective
4 electricity savings and related benefits.

5 (3) Accommodates the need for broader statewide or regional
6 programs.

7 (b) All audit and reporting requirements established by the
8 commission pursuant to Section 381 and other statutes shall apply
9 to the parties chosen as administrators under this section.

10 (c) If a community choice aggregator is not the administrator
11 of energy efficiency and conservation programs for which its
12 customers are eligible, the commission shall require the
13 administrator of cost-effective energy efficiency and conservation
14 programs to direct a proportional share of its approved energy
15 efficiency program activities for which the community choice
16 aggregator's customers are eligible, to the community choice
17 aggregator's territory without regard to customer class. To the
18 extent that energy efficiency and conservation programs are
19 targeted to specific locations to avoid or defer transmission or
20 distribution system upgrades, the targeted expenditures shall
21 continue irrespective of whether the loads in those locations are
22 served by an aggregator or by an electrical corporation. The
23 commission shall also direct the administrator to work with the
24 community choice aggregator, to provide advance information
25 where appropriate about the likely impacts of energy efficiency
26 programs and to accommodate any unique community program
27 needs by placing more, or less, emphasis on particular approved
28 programs to the extent that these special shifts in emphasis in no
29 way diminish the effectiveness of broader statewide or regional
30 programs. If the community choice aggregator proposes energy
31 efficiency programs other than programs already approved for
32 implementation in its territory, it shall do so under established
33 commission policies and procedures. The commission may order
34 an adjustment to the share of energy efficiency program activities
35 directed to a community aggregator's territory if necessary to
36 ensure an equitable and cost-effective allocation of energy
37 efficiency program activities.

38 (d) The commission shall establish an impartial process for
39 making the determination of whether a third party, including a
40 community choice aggregator, may become administrators for

1 cost-effective energy efficiency and conservation programs
2 pursuant to subdivision (a), and shall not delegate or otherwise
3 transfer the commission's authority to make this determination to
4 an electrical corporation.

5 (e) The impartial process established by the commission shall
6 allow a registered community choice aggregator to elect to become
7 the administrator of funds collected from the aggregator's electric
8 service customers and collected through a nonbypassable charge
9 authorized by the commission, for cost-effective energy efficiency
10 and conservation programs, except those funds collected for
11 broader statewide and regional programs authorized by the
12 commission.

13 (f) A community choice aggregator electing to become an
14 administrator shall submit a plan to the commission for the
15 administration of cost-effective energy efficiency and conservation
16 programs for the aggregator's electric service customers that
17 includes funding requirements, a program description, and the
18 duration of the program. The program shall do all of the following:

19 (1) Be consistent with the goals of programs established pursuant
20 to Section 381 and the Reliable Electric Service Investments Act
21 (Article 15 (commencing with Section 399)).

22 (2) Advance the public interest in maximizing cost-effective
23 electricity savings and related benefits.

24 (3) Accommodate the need for broader statewide or regional
25 programs.

26 (4) Include audit and reporting requirements consistent with the
27 audit and reporting requirements established by the commission
28 pursuant to Section 381 or the Reliable Electric Service
29 Investments Act (Article 15 (commencing with Section 399)).

30 (5) Include evaluation, measurement, and verification protocols
31 established by the community choice aggregator.

32 SEC. 7. Section 395.5 of the Public Utilities Code is amended
33 to read:

34 395.5. (a) For purposes of this section, the following terms
35 have the following meanings:

36 (1) "Nonprofit charitable organization" means any charitable
37 organization described in Section 501(c)(3) of the federal Internal
38 Revenue Code that has as its primary purpose serving the needs
39 of the poor or elderly.

(2) “Electric commodity” means electricity used by the customer or a supply of electricity available for use by the customer, and does not include services associated with the transmission and distribution of electricity.

(b) Notwithstanding Section 80110 of the Water Code, a nonprofit charitable organization may acquire electric commodity service through a direct transaction with an electric service provider if electric commodity service is donated free of charge without compensation.

(c) A nonprofit charitable organization that acquires donated electric commodity service through a direct transaction pursuant to this section shall be responsible for paying all of the following:

(1) Those charges and surcharges that would be imposed upon a retail end-use customer of a community aggregator pursuant to subdivisions (d), (e), (f), and (h) of Section 366.2.

(2) The transmission and distribution charges of an electrical corporation or a local publicly owned electric utility.

(3) A nonbypassable charge imposed pursuant to Article 7 (commencing with Section 381), Article 8 (commencing with Section 385), or Article 15 (commencing with Section 399).

(4) Costs imposed upon a load-serving entity pursuant to Section 380.

(d) Existing direct access rules and all service obligations otherwise applicable to electric service providers shall govern transactions under this section.

(e) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

SEC. 8. Section 707 is added to the Public Utilities Code, to read:

707. (a) Not later than March 1, 2012, the commission shall institute a rulemaking proceeding for the purpose of considering and adopting a code of conduct, associated rules, and enforcement procedures, to govern the conduct of the electrical corporations relative to the consideration, formation, and implementation of community choice aggregation programs authorized in Section 366.2. The code of conduct, associated rules, and enforcement procedures, shall do all of the following:

(1) Ensure that an electrical corporation does not market against a community choice aggregation program, except through an

1 independent marketing division that is funded exclusively by the
2 electrical corporation's shareholders and that is functionally and
3 physically separate from the electrical corporation's
4 ratepayer-funded divisions.

5 (2) Limit the electrical corporation's independent marketing
6 division's use of support services from the electrical corporation's
7 ratepayer-funded divisions, and ensure that the electrical
8 corporation's independent marketing division has allocated costs
9 of any permissible support services from the electrical corporation's
10 ratepayer-funded divisions on a fully allocated embedded cost
11 basis, providing detailed public reports of such use.

12 (3) Ensure that the electrical corporation's independent
13 marketing division does not have access to competitively sensitive
14 information.

15 (4) (A) Incorporate rules that the commission finds to be
16 necessary or convenient in order to ~~promote~~ *facilitate* the
17 development of community choice aggregation programs, to foster
18 fair competition, or to protect against cross-subsidization paid by
19 ratepayers.

20 (B) It is the intent of the Legislature that the rules include, in
21 whole or in part, the rules approved by the commission in Decision
22 97-12-088 and Decision 08-06-016.

23 (C) This paragraph does not limit the authority of the
24 commission to adopt rules that it determines are necessary or
25 convenient in addition to those adopted in Decision 97-12-088 and
26 Decision 08-06-016 or to modify any rule adopted in those
27 decisions.

28 (5) Provide for any other matter that the commission determines
29 to be necessary or advisable to protect a ratepayer's right to be
30 free from forced speech or to implement that portion of the federal
31 Public Utility Regulatory Policies Act of 1978 that establishes the
32 federal standard that no electric utility may recover from any person
33 other than the shareholders or other owners of the utility, any direct
34 or indirect expenditure by the electric utility for promotional or
35 political advertising (16 U.S.C. Sec. 2623(b)(5)).

36 (b) The commission shall ensure that the code of conduct,
37 associated rules, and enforcement procedures are implemented by
38 no later than January 1, 2013.

39 (c) This section does not limit the authority of the commission
40 to require that any marketing against a community choice

1 aggregation plan shall be conducted by an affiliate of the electrical
2 corporation, or to require that marketing against a community
3 choice aggregator not be conducted by a marketing division of the
4 electrical corporation, subject to affiliate transaction rules to be
5 developed by the commission.

6 SEC. 9. Part 5 (commencing with Section 3260) is added to
7 Division 1 of the Public Utilities Code, to read:

8
9 PART 5. GENERAL PROVISIONS

10
11 3260. Nothing in this division prohibits payments pursuant to
12 an agreement authorized by the National Labor Relations Act (29
13 U.S.C. Sec. 151 et seq.), or payments permitted by the federal
14 Labor Management Cooperation Act of 1978 (29 U.S.C. Secs.
15 173, 175a, and 186). Nothing in this division restricts any use
16 permitted by federal law of money paid pursuant to these acts.

17 SEC. 10. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.